

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF PERU
CONCERNING THE ESTABLISHMENT OF AN AMERICAS FUND
AND ADMINISTERING BOARD

The Government of the United States of America and the Government of the Republic of Peru ("the Parties"),

Seeking to implement the Enterprise for the Americas Initiative,

Desiring to enhance the friendship and spirit of cooperation between the Parties,

Desiring to promote environmentally sound and sustainable economic development, including the encouragement of child survival and child development,

Recognizing that environmental protection, conservation, and sustainable natural resource management are key elements in building an ecologically and economically sound future for all countries in the Western Hemisphere,

Recognizing that a country's children are its greatest resource, represent its future, deserve a sound natural resource base for a quality life, and deserve protection from the health hazards of preventable environmental pollution and degradation,

Recognizing that environmentally sound and sustainable economic development, and child survival and child development, may help alleviate extreme poverty and promote alternative development,

Recognizing that child survival and child development are frequently linked to environmental conservation and can often be addressed effectively in tandem,

Wishing to follow upon the Program Agreement dated June 26, 1997 by and between the Government of the United States of America and the Government of the Republic of Peru concerning the Sale, Reduction and Cancellation of Certain Loans ("Program Agreement")

Have agreed as follows:



I
PURPOSE

The purpose of this Agreement is to provide for the establishment of an Americas Fund and Administering Board in order to promote activities designed to preserve, protect, or manage the natural and biological resources of Peru in an environmentally sound and sustainable manner, while encouraging the improvement of child survival and development in Peru.

II
AMERICAS FUND

1. Pursuant to Articles IV, VII.1 and IX of the Program Agreement, the Government of the Republic of Peru shall ensure that the entire amount owed as the result of discharge through buybacks under Article IV of the Program Agreement is deposited into an escrow account.

2. The Government of the Republic of Peru shall establish an Americas Fund ("the "Fund") in accordance with the laws of Peru. The Fund shall be administered by the Board established pursuant to Article III. Any monies deposited in the Fund, or grants made from the Fund, will be free from any taxation, levies, fees or other charges imposed by the Parties, to the extent permissible by law.

3. All amounts in the escrow account referred to in paragraph 1 shall be transferred to the Fund upon its establishment.

4. Monies from other sources, including public and private creditors of the Government of the Republic of Peru, in the form of local currency or other currencies, may also be deposited into the Fund. Once deposited, these monies shall be subject to the requirements and conditions agreed to between the donor(s) of such monies and the Parties, so long as these terms are consistent with this Agreement.

5. Deposits in the Fund shall be the property of the Government of the Republic of Peru until they are disbursed. The Government of the Republic of Peru shall not grant or permit to be granted a lien, mortgage, charge, privilege or priority with respect to such deposits except in conjunction with disbursements at the direction of the Board pursuant to Article VI.

6. The Government of the Republic of Peru, in consultation with the Government of the United States of America, shall appoint a fiscal agent for the Fund, who shall be charged with the investment and disbursement of the monies in the Fund. The fiscal agent shall ensure that the Board is promptly notified

in writing when the Government of the Republic of Peru makes a deposit in the Fund pursuant to paragraph 2 above.

7. Deposits in the Fund shall be prudently invested by the fiscal agent until disbursed. Returns on investment of funds shall remain in the Fund until disbursed.

8. The fiscal agent shall make every effort to ensure that investments made pursuant to paragraph 7 are of high quality and yield a positive real interest rate.

III ESTABLISHMENT AND COMPOSITION OF THE BOARD

1. The Government of the Republic of Peru, in consultation with local nongovernmental organizations, shall ensure that an Americas Board (the "Board") is established by law.

2. The Board shall consist of eight members. It shall be composed of:

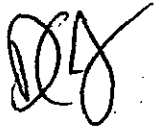
A. one representative appointed by the Government of the United States of America;

B. two representatives appointed by the Government of the Republic of Peru; and,

C. five representatives from a broad range of Peruvian environmental and local community development, including child survival and child development, nongovernmental organizations, and scientific and academic bodies, selected by the Government of the Republic of Peru in consultation with these groups. These representatives shall be approved jointly by the Parties, and shall constitute a majority of the members of the Board.

3. Board members appointed in accordance with Article III.2. (A) and (B) shall serve ad honorem at the discretion of the appointing Party. Board members described in Article III.2. (C) shall be appointed by the Government of the Republic of Peru, shall serve ad honorem for a period of three years, and may be removed only to the extent provided by law. Consecutive terms shall be permitted.

4. A Board member may not participate in the approval of any proposed grant which, if approved, would result in a financial benefit for the member, any member of his family or an organization in which the member or any member of his family has a direct financial interest. Further, a Board member may not participate in the approval of any proposed grant to an organization which the member represents.



IV
FUNCTIONS OF THE BOARD

1. The Board shall be responsible for the management and administration of the program undertaken, and oversight of grant activities funded, pursuant to this Agreement. The Government of the Republic of Peru shall ensure that the Board has the necessary authority to carry out the functions assigned to it in this Agreement.

2. The Board shall:

A. Issue and widely disseminate a public announcement of the call for grant proposals which states the criteria for the selection of projects eligible for grant assistance, and the qualifications of organizations eligible to submit proposals for grant awards.

B. Receive proposals for grant assistance from entities described in Article V.2 of this Agreement, and make grants to such entities for the activities enumerated in Article V.1 of this Agreement.

C. Publicly announce grants awarded by the Board.

D. Present to the Parties:


i. an annual program of prospective activities, by October 31;

ii. an annual report on the activities funded by the Board during the previous year, which shall include on-going, multi-year projects, by October 31;

iii. an annual audit by an independent auditor covering the previous program year, by October 31;

E. Appoint an executive secretariat to perform all necessary actions required by the Board for its adequate functioning.

3. Proposed grants with life-of-project total in excess of \$100,000 shall be presented by the Board to both Parties. If either Party disapproves of such a grant, that Party must notify the Board of its disapproval, in which case the Board may not award the proposed grant. Proposed grants not disapproved by either Party within 45 days of presentation to the Parties' members on the Board shall no longer be subject to either Party's disapproval.



4. The Board shall adopt by majority vote procedures for its operation, provided that the majority includes the affirmative votes of the representatives of the Parties appointed in accordance with Article III.2.(A) and (B). No disbursements pursuant to Article VI may be made prior to the adoption of these procedures.

5. The Board shall meet at least once every three months.

6. The Board shall ensure that performance under grants and other agreements is monitored to determine whether time schedules and other performance goals are being achieved. Grant agreements shall provide for periodic progress reports from the grantee to the Board. Such reports will review all project components essential to the successful achievement of the goals of the project. Such reports should be received from the grantee at least semi-annually.

7. The Board may draw sums from the Fund necessary to pay for the Board's administrative expenses, including the fiscal audit required pursuant to this article. Board members appointed under article III.2.C may be compensated only for travel expenses and provided reasonable per diem. Annual administrative expenses may not exceed a ceiling to be agreed between the Parties.

8. The Board's organizing statutes, written policies, operating procedures, summaries of proceedings, books, records, and reports shall be retained in the files of the Board. A permanent record shall also be maintained on the decision criteria used by the Board in the award of specific grants. The Board shall make available for public inspection its organizing statutes, written policies, operating procedures, summaries of proceedings, and decision criteria used in the award of specific grants. Authorities of either party, however, shall be granted access to all Board documents, including minutes of meetings, books, records, and reports.

9. Pursuant to Article VIII(5) of the Agreement, the Government of the Republic of Peru may require that those funds which derive from Article VII.1 of the Program Agreement, plus interest accrued on such funds, be transferred in United States dollars to an escrow account. The Board's operating procedures should expressly authorize the Government of the Republic of Peru to require such a transfer. Unless otherwise agreed to by the Parties, the Government of the Republic of Peru shall under no other circumstances require that the Board transfer monies contained in the Fund to another account.

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ELIGIBILITY OF PROJECTS AND ORGANIZATIONS

1. Grants from the Americas Fund shall be used for:
 - A. activities that link the conservation and sustainable use of natural resources with local community development; and,
 - B. child survival and other child development activities.
2. Organizations which shall be eligible for grants from the Fund for projects in Peru are:
 - A. Peruvian nongovernmental environmental, conservation, child survival and child development, development, and indigenous peoples organizations;
 - B. other appropriate local or regional entities;
 - C. in exceptional circumstances, and to the extent permissible under the domestic legal requirements of the Parties, the Government of the Republic of Peru or any public entity.
3. Grants shall be awarded to organizations strictly on the merits of proposals presented to the Board, without regard to whether the proposing organization has or does not have representation on the Board.
4. In determining which projects shall receive grants from the Fund, the Board shall give priority to projects that are managed by nongovernmental organizations and that involve local communities in their planning and execution.

VI

DISBURSEMENT OF FUNDS

1. The Board shall instruct the fiscal agent appointed pursuant to Article II.6 to disburse grants from the Fund to organizations eligible under Article V.2 when the Board approves a proposal eligible under Article V.1. All disbursements shall be made pursuant to a grant agreement.
2. The fiscal agent shall make disbursements promptly to designated recipients in accordance with directions received from the Board. In no case shall more than 14 days elapse between receipt of a direction for disbursement and actual disbursement of funds.



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VII
CONSULTATION AND REVIEW

1. Upon the request of either Party, the Parties shall consult concerning the implementation or interpretation of this Agreement. These consultations shall take place within 60 days after the request for consultations is received in writing from the other Party.
2. Consultations between the Parties concerning the interpretation or implementation of this Agreement may be conducted through written submissions between the Secretary of State of the United States of America, or such person designated by the Secretary of State, and the Minister of Economy and Finance of the Republic of Peru, or such person designated by the Minister of Economy and Finance. Until further notice, the Secretary of State's designee shall be the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs. The Minister of Economy and Finance's designee, until further notice, shall be the Vice Minister of Economy.
3. Either Party may request consultations with the Board and the other Party after reviewing the Board's reports and audits presented pursuant to Article IV.2.D. Consultations shall take place within 60 days after a written request for consultations is received from the other Party.
4. The Parties shall meet to review the operation of this agreement annually from the date of its entry into force.

VIII
SUSPENSION OF DISBURSEMENTS

1. If at any time either of the Parties determines that issues requiring consultation under Article VII have not been satisfactorily resolved, such Party may notify the other in writing.
 2. Notwithstanding any other provision of this Agreement, upon receipt of written notification from the Government of the United States of America, the Government of the Republic of Peru shall require that the Board immediately suspend disbursements under Article VI.
 3. Notwithstanding any other provision of this Agreement, upon providing such written notification to the Government of the United States of America, the Government of the Republic of Peru may require that the Board immediately suspend disbursements under Article VI.
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4. Suspension of disbursements shall mean that:

A. no further approval of grants shall be undertaken until the Parties agree to resume such activity;

B. disbursements pursuant to already approved grant agreements shall proceed unless the specific grant agreement is suspended pursuant to that grant agreement; and,

C. notwithstanding subparagraph 4.B above, should the Parties jointly certify in writing to the Board that the manner in which the grant agreement was awarded was inconsistent with Article III.4 or the operating procedures of the Board, the Parties may require the Board to suspend disbursements pursuant to that grant agreement.



5. If the Government of the Republic of Peru fails to require that the Board suspend disbursements under Article VI of the Agreement within 7 days of receiving written notification from the Government of the United States ("the notification period"), the Government of the United States may, at its discretion, require that those funds which derive from Article VII.1 of the Program Agreement, plus accrued interest on such funds, be transferred in United States dollars to an escrow account. The escrow account to be used for this specific purpose shall be established by the Parties. Upon resolution by the Parties of the issues giving rise to the suspension of disbursements, the funds contained in the escrow account shall be redeposited into the Fund.

6. The Government of the Republic of Peru shall not grant or permit to be granted a lien, mortgage, charge, privilege or priority with respect to such deposits except in conjunction with disbursements at the direction of the Board pursuant to Article VI.

IX
TERMINATION

1. In the event of failure to resolve disputes in connection with the interpretation or implementation of the agreement, either Party may terminate this Agreement upon six months' written notice to the other Party.

2. No disbursements from the Fund shall occur after a Party has given notice to terminate the Agreement, unless the Parties agree to permit disbursements. The termination of this Agreement shall not prevent expenditures of funds disbursed before notice to terminate is given.



3. Upon termination of this Agreement, the disposition of amounts remaining in the Fund shall be subject to a formula to be mutually agreed upon by the Parties.

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ENTRY INTO FORCE, AMENDMENT AND OTHER ARRANGEMENTS

1. This Agreement shall enter into force upon signature and shall remain in force unless terminated by the Parties in accordance with Article IX.
2. This Agreement may be amended by written agreement of the Parties.
3. Nothing in this Agreement shall prejudice other arrangements between the Parties concerning debt reduction or cooperation and assistance for environmental, conservation, child survival and child development purposes.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Lima, Peru, this ²⁴18th day of December, 1997, in duplicate, in the English language. A Spanish text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text.



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF THE
REPUBLIC OF PERU